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Defendant.

MEMORANDUM OPINION AND ORDER  
AFFIRMING DECISION OF THE  
COMMISSIONER OF SOCIAL SECURITY

Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before this Magistrate Judge. After reviewing the pleadings, transcripts, and administrative record (“AR”), the Court concludes that the Commissioner’s decision must be affirmed and this case dismissed with prejudice.

## BACKGROUND

Plaintiff is a 52-year-old male who applied for Social Security Disability Insurance benefits on April 27, 2013, alleging disability beginning April 16, 2012. (AR 20.) The ALJ determined that Plaintiff had not engaged in substantial gainful activity since April 16, 2012, the alleged onset date. (AR 22.)

Plaintiff's claim was denied initially on August 19, 2013, and on reconsideration on April 17, 2014. (AR 20.) Plaintiff filed a timely request for hearing, which was held before Administrative Law Judge ("ALJ") Richard T. Breen on October 29, 2015, in Los Angeles, California. (AR 20.) Although informed of the right to representation, Claimant chose to appear and testify without the assistance of an attorney or other representative. (AR 20.) Medical expert ("ME") Darius Ghazi, M.D. and vocational expert ("VE") Gail L. Maron also appeared and testified at the hearing. (AR 20.)

The ALJ issued an unfavorable decision on February 4, 2016. (AR 20-27.) The Appeals Council denied review on May 30, 2017. (AR 1-4.)

## DISPUTED ISSUES

As reflected in the Joint Stipulation, Plaintiff raises the following disputed issues as grounds for reversal and remand:

1. Whether the ALJ properly rejected Dr. Kim's opinion.
2. Whether the ALJ properly rejected Plaintiff's pain and symptom testimony.

## STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and based on the proper legal standards).

Substantial evidence means "more than a mere scintilla," but less than a preponderance." Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is "such relevant evidence as a

1 reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at  
2 401 (internal quotation marks and citation omitted).

3 This Court must review the record as a whole and consider adverse as well as  
4 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). Where  
5 evidence is susceptible to more than one rational interpretation, the ALJ’s decision must be  
6 upheld. Morgan v. Comm’r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).  
7 “However, a reviewing court must consider the entire record as a whole and may not affirm  
8 simply by isolating a ‘specific quantum of supporting evidence.’” Robbins, 466 F.3d at 882  
9 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495  
10 F.3d 625, 630 (9th Cir. 2007).

### 11 THE SEQUENTIAL EVALUATION

12 The Social Security Act defines disability as the “inability to engage in any substantial  
13 gainful activity by reason of any medically determinable physical or mental impairment which  
14 can be expected to result in death or . . . can be expected to last for a continuous period of not  
15 less than 12 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Commissioner has  
16 established a five-step sequential process to determine whether a claimant is disabled. 20  
17 C.F.R. §§ 404.1520, 416.920.

18 The first step is to determine whether the claimant is presently engaging in substantial  
19 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging  
20 in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S. 137,  
21 140 (1987). Second, the ALJ must determine whether the claimant has a severe impairment or  
22 combination of impairments. Parra, 481 F.3d at 746. An impairment is not severe if it does not  
23 significantly limit the claimant’s ability to work. Smolen, 80 F.3d at 1290. Third, the ALJ must  
24 determine whether the impairment is listed, or equivalent to an impairment listed, in 20 C.F.R.  
25 Pt. 404, Subpt. P, Appendix I of the regulations. Parra, 481 F.3d at 746. If the impairment  
26 meets or equals one of the listed impairments, the claimant is presumptively disabled. Bowen,  
27 482 U.S. at 141. Fourth, the ALJ must determine whether the impairment prevents the  
28 claimant from doing past relevant work. Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir.

1 2001). Before making the step four determination, the ALJ first must determine the claimant's  
2 residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). The RFC is "the most [one] can  
3 still do despite [his or her] limitations" and represents an assessment "based on all the relevant  
4 evidence." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The RFC must consider all of the  
5 claimant's impairments, including those that are not severe. 20 C.F.R. §§ 416.920(e),  
6 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

7 If the claimant cannot perform his or her past relevant work or has no past relevant work,  
8 the ALJ proceeds to the fifth step and must determine whether the impairment prevents the  
9 claimant from performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864,  
10 869 (9th Cir. 2000). The claimant bears the burden of proving steps one through four,  
11 consistent with the general rule that at all times the burden is on the claimant to establish his or  
12 her entitlement to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established  
13 by the claimant, the burden shifts to the Commissioner to show that the claimant may perform  
14 other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support  
15 a finding that a claimant is not disabled at step five, the Commissioner must provide evidence  
16 demonstrating that other work exists in significant numbers in the national economy that the  
17 claimant can do, given his or her RFC, age, education, and work experience. 20 C.F.R.  
18 § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is disabled and  
19 entitled to benefits. Id.

## 20 THE ALJ DECISION

21 In this case, the ALJ determined at step one of the sequential process that Plaintiff has  
22 not engaged in substantial activity since April 16, 2012, the alleged onset date. (AR 22.)

23 At step two, the ALJ determined that Plaintiff has the following medically determinable  
24 severe impairments: degenerative disc disease; gout; status post left knee meniscectomy; and  
25 obesity. (AR 22.)

26 At step three, the ALJ determined that Plaintiff does not have an impairment or  
27 combination of impairments that meets or medically equals the severity of one of the listed  
28 impairments. (AR 23.)

1 The ALJ then found that Plaintiff has the RFC to perform light work as defined in 20  
2 C.F.R. § 404.1567(b), with the following limitations:

3 No more than standing and/or walking three hours out of an eight hour  
4 workday; never climbing ladders and scaffolds; and no exposure to  
5 unprotected heights.

6 (AR 23-26.) In determining the above RFC, the ALJ made an adverse credibility determination  
7 that Plaintiff's subjective symptom allegations are "not entirely credible." (AR 24.)

8 At step four, the ALJ found that Plaintiff is unable to perform his past relevant work as a  
9 prop maker. (AR 26.) The ALJ, however, also found that, considering Claimant's age,  
10 education, work experience, and RFC, there are jobs that exist in significant numbers in the  
11 national economy that Claimant can perform, including the jobs of sewing machine operator,  
12 cashier II, and addresser. (AR 26-27.)

13 Consequently, the ALJ found that Claimant is not disabled within the meaning of the  
14 Social Security Act. (AR 27.)

## 15 **DISCUSSION**

16 The ALJ decision must be affirmed. The ALJ properly considered the medical evidence.  
17 The ALJ properly discounted Plaintiff's subjective symptom allegations. The ALJ's RFC for  
18 Plaintiff is supported by substantial evidence.

### 19 **I. THE ALJ PROPERLY CONSIDERED THE MEDICAL EVIDENCE**

20 Plaintiff contends that the ALJ improperly discounted the opinion of his treating  
21 physician, Dr. Richard Kim. The Court disagrees.

#### 22 **A. Relevant Federal Law**

23 The ALJ's RFC is not a medical determination but an administrative finding or legal  
24 decision reserved to the Commissioner based on consideration of all the relevant evidence,  
25 including medical evidence, lay witnesses, and subjective symptoms. See SSR 96-5p; 20  
26 C.F.R. § 1527(e). In determining a claimant's RFC, an ALJ must consider all relevant evidence  
27 in the record, including medical records, lay evidence, and the effects of symptoms, including  
28 pain reasonably attributable to the medical condition. Robbins, 446 F.3d at 883.

1 In evaluating medical opinions, the case law and regulations distinguish among the  
2 opinions of three types of physicians: (1) those who treat the claimant (treating physicians); (2)  
3 those who examine but do not treat the claimant (examining physicians); and (3) those who  
4 neither examine nor treat the claimant (non-examining, or consulting, physicians). See 20  
5 C.F.R. §§ 404.1527, 416.927; see also Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). In  
6 general, an ALJ must accord special weight to a treating physician's opinion because a treating  
7 physician "is employed to cure and has a greater opportunity to know and observe the patient  
8 as an individual." Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989) (citation omitted). If  
9 a treating source's opinion on the issues of the nature and severity of a claimant's impairments  
10 is well-supported by medically acceptable clinical and laboratory diagnostic techniques, and is  
11 not inconsistent with other substantial evidence in the case record, the ALJ must give it  
12 "controlling weight." 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2).

13 Where a treating doctor's opinion is not contradicted by another doctor, it may be  
14 rejected only for "clear and convincing" reasons. Lester, 81 F.3d at 830. However, if the  
15 treating physician's opinion is contradicted by another doctor, such as an examining physician,  
16 the ALJ may reject the treating physician's opinion by providing specific, legitimate reasons,  
17 supported by substantial evidence in the record. Lester, 81 F.3d at 830-31; see also Orn, 495  
18 F.3d at 632; Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002). Where a treating  
19 physician's opinion is contradicted by an examining professional's opinion, the Commissioner  
20 may resolve the conflict by relying on the examining physician's opinion if the examining  
21 physician's opinion is supported by different, independent clinical findings. See Andrews v.  
22 Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995); Orn, 495 F.3d at 632. Similarly, to reject an  
23 uncontradicted opinion of an examining physician, an ALJ must provide clear and convincing  
24 reasons. Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005). If an examining physician's  
25 opinion is contradicted by another physician's opinion, an ALJ must provide specific and  
26 legitimate reasons to reject it. Id. However, "[t]he opinion of a non-examining physician cannot  
27 by itself constitute substantial evidence that justifies the rejection of the opinion of either an  
28 examining physician or a treating physician"; such an opinion may serve as substantial

1 evidence only when it is consistent with and supported by other independent evidence in the  
2 record. Lester, 81 F.3d at 830-31; Morgan, 169 F.3d at 600.

### 3 **B. Analysis**

4 Plaintiff contends that he is unable to work due to back, knee, and overall pain from gout  
5 and cannot sit for longer than 13 minutes before shifting positions. (AR 24.) He also alleges  
6 that his joints swell up causing pain that prevents him from moving or walking for significant  
7 periods. (AR 24.) The ALJ determined that Plaintiff has the medically determinable severe  
8 impairments of degenerative disc disease, gout, status post left knee meniscectomy, and  
9 obesity. (AR 22.) Notwithstanding these impairments, however, the ALJ assessed a light work  
10 RFC with limitations to three hours of standing and walking, never climbing ladders and  
11 scaffolds, and no exposure to unprotected heights. (AR 23.)

12 The medical evidence shows Plaintiff has a long history of gout, and knee, and low back  
13 pain. (AR 24.) He had a left knee ligament repair in 2006. (AR 24.) A February 2014 MRI of  
14 the right knee showed no evidence of any meniscal tear, but there was degeneration of the  
15 medial meniscus, chronic sprain of the medial collateral ligament and tricompartmental  
16 osteoarthritis. (AR 24.) A May 2012 lumbar X-ray showed multilevel degenerative changes. A  
17 July 2012 MRI of the lumbar spine showed disc bulges with central canal stenosis. (AR 24.)  
18 He also received lumbar steroidal injections in October 2012, January 2013, and May 2013  
19 with reported relief. (AR 24.)

20 The ALJ found that Plaintiff's treatment was conservative except for the three injections  
21 noted above. (AR 24.) Since then, Claimant's symptoms have been largely relieved with  
22 medication that provided moderate to significant relief which allows him to remain functional.  
23 (AR 24.) His treating orthopedist advised against surgery unless his condition worsened. (AR  
24 24.) At times Plaintiff has done well with physical therapy and denied radicular symptoms. (AR  
25 25.) He also has had a negative straight leg raise test, a normal gait, full range of motion, full  
26 motor strength, and a normal neurological and reflex examination. (AR 25.)

27 For medical opinions regarding Plaintiff's RFC, the ALJ gave great weight to the opinion  
28 of the testifying medical expert, Dr. Darius Ghazi. (AR 25, 38-48.) Having reviewed the entire

1 file as of the date of the hearing, he opined that due to Claimant's back, knee, and gout  
2 impairments he would be limited to light work and could lift up to 20 pounds with limitations to  
3 three hours out of an eight hour workday, and no climbing of ladders, ropes, or scaffolds and  
4 no exposure to heights. (AR 25, 42-45.) Two State agency reviewing physicians in 2013 and  
5 2014 opined that Plaintiff was capable of light work, including walking and standing six hours in  
6 an eight hour workday. (AR 25, 78-83; 89-94.) The ALJ gave greater weight to Dr. Ghazi's  
7 opinion because he had a greater longitudinal perspective of the medical record. (AR 25.)

8 Subsequent to the hearing, more medical records (13F) were obtained that include a  
9 progress note of Dr. Richard Kim dated April 17, 2015. (AR 25, 31, 466, 500-501.) Dr. Kim  
10 examined Plaintiff and opined that he can walk for 2 hours without any weights and would be  
11 unable to lift more than 20 pounds and bending is not recommended. (AR 25, 501.) He also  
12 found that Plaintiff had mild bursal swelling in his elbows but his ankles, knees, wrists, and  
13 hands were "unremarkable." (AR 501.) His back was not tender. (AR 501.) There is no  
14 evidence that Dr. Kim treated Plaintiff more than once.

15 The ALJ gave Dr. Kim's opinion partial weight because it is "mostly consistent with the  
16 medical evidence and treatment." (AR 25.) The ALJ, however, determined that "Dr. Ghazi's  
17 assessment that [Plaintiff] can walk for three hours is given greater weight due to his greater  
18 longitudinal perspective of the medical record." (AR 25.) Plaintiff contends that the ALJ erred  
19 in giving greater weight to Dr. Ghazi due to his greater longitudinal perspective. Plaintiff  
20 observes that Dr. Ghazi did not have the entire record before him when he testified, including  
21 Dr. Kim's opinion.

22 This is a curious argument for Plaintiff to make because Dr. Kim's progress note does  
23 not indicate that he reviewed any medical records (AR 500-501), including those submitted  
24 after the hearing. (AR 466-499.) The Ninth Circuit gives limited weight to an opinion based on  
25 a one-time examination without review of medical records. Reddick v. Chater, 157 F.3d 715,  
26 727 (9th Cir. 1998). Dr. Ghazi by contrast reviewed most of the medical records, which include  
27 Exhibits 1 through 8. (AR 213-455.) Factually, then, Dr. Ghazi reviewed a far wider range of  
28 Plaintiff's medical records than did Dr. Kim. The Appeals Council, moreover, found that the



1 medical records submitted after the hearing do not show a reasonable probability of changing  
2 the outcome of the decision. (AR 2.) Additionally, at the hearing on October 29, 2015, Plaintiff  
3 presented new medical opinions from Dr. Roger Lind and nurse practitioner Elizabeth Tighe  
4 that became Exhibits 10F and 11F. (AR 25, 46-47, 49, 460, 462.) Those one-page opinions  
5 assert that Plaintiff is permanently disabled. (AR 25, 46-47, 460, 462.) Unlike Dr. Kim who  
6 never considered these documents, the ALJ advised Dr. Ghazi, still present at the hearing by  
7 telephone (AR 25, 36), that Dr. Lind and Nurse Tighe had opined that Plaintiff was permanently  
8 disabled “based on pain complicated by gout and arthritis.” (AR 46-47.) Asked if these  
9 opinions changed his assessment, Dr. Ghazi replied no, stating Plaintiff’s back issue, arthritis,  
10 and stenosis are age appropriate. (AR 48.) The ALJ, moreover, rejected the opinions of Dr.  
11 Lind and Nurse Tighe as “conclusory.” An ALJ may reject a treating physician’s opinion that is  
12 “conclusory, brief and unsupported by the record as a whole . . . or by objective medical  
13 findings” and that is contradicted by other assessments. Batson v. Comm’r, 359 F.3d 1190,  
14 1195 at n.3 (9th Cir. 2004); Bayliss, 427 F.3d at 1216. Plaintiff has not challenged or  
15 mentioned the ALJ’s rejection of the opinions of Dr. Lind and Nurse Tighe. The ALJ’s finding  
16 that Dr. Ghazi had a greater longitudinal perspective than Dr. Kim is a specific, legitimate  
17 reason supported by substantial evidence for rejecting Dr. Kim’s two hour limitation on standing  
18 and walking.

19 Dr. Kim, moreover, does not explicitly assess a light or sedentary RFC. Dr. Kim’s RFC  
20 contains limitations consistent with both light work (lifting 20 pounds) and sedentary work  
21 (walking and standing two hours). Light work generally requires lifting up to 20 pounds. 20  
22 C.F.R. § 404.1567(b); SSR 83-10, at \*5. Sedentary work generally involves standing and  
23 walking no more than 2 hours. SSR 83-10, at \*5. Plaintiff postulates that Mr. Kelly was closely  
24 approaching advanced age on the ALJ decision date and if limited to sedentary work would be  
25 deemed disabled under Rule 201.14 of the Medical-Vocational Guidelines (“Grids”), 20 C.F.R.  
26 Part 404, Subpart P, Appendix 2. If classified as limited to light work, he would be deemed not  
27 disabled. The Grids, however, are not determinative here because of limitations that erode the  
28 light occupational base. (AR 26-27.) The ALJ properly asked the VE whether there were jobs

1 in the national economy that Plaintiff could perform with the proposed light work RFC (based on  
2 Dr. Ghazi's opinion) that limits him to three hours standing and walking.<sup>1</sup> (AR 27, 67-68.) The  
3 VE testified that with the ALJ's proposed limitations Plaintiff could perform the light unskilled  
4 jobs of semi-automatic sewing machine operator and cashier II. (AR 27, 67-68.) Eroding the  
5 occupational base of these jobs by 70% to account for the three hour standing and walking  
6 limitation, there would still be over 600,000 jobs available, more than sufficient to meet the  
7 Commissioner's step five burden to demonstrate a significant number of jobs in the national  
8 economy that Claimant could perform. (AR 27, 67-68.) See Gutierrez v. Colvin, 740 F.3d 519,  
9 527-29 (9th Cir. 2014) (25,000 jobs in California or nationally is a significant number).

10 Thus, the ALJ's light work RFC with a three hour limitation on standing and walking is  
11 supported by the medical evidence. The VE's testimony establishes that there is work in the  
12 national economy that Plaintiff can perform. Plaintiff disagrees with the ALJ's rejection of Dr.  
13 Kim's opinion based on Dr. Ghazi's light work RFC with a three hour walking and standing  
14 limitation. It is the ALJ's responsibility, however, to resolve conflicts in the medical evidence.  
15 Andrews, 53 F.3d at 1039. Where an ALJ's interpretation of the record is reasonable as it is  
16 here, it should not be second-guessed. Rollins v. Massanari, 261 F.3d at 853, 857 (9th Cir.  
17 2001).

18 The ALJ properly considered the medical evidence. The ALJ rejected the opinion of Dr.  
19 Kim that Plaintiff was limited to two hours standing and walking for specific, legitimate reasons  
20 supported by substantial evidence.

## 21 **II. THE ALJ PROPERLY DISCOUNTED PLAINTIFF'S SUBJECTIVE SYMPTOMS**

22 Plaintiff contends that the ALJ erred in discounting his subjective symptom allegations.  
23 The Court disagrees.

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27 <sup>1</sup> Plaintiff argues that the ALJ erred in not including Dr. Kim's two hour standing and walking  
28 limitation in his hypothetical question to the VE. Yet an ALJ is not required to include limitations  
that have been rejected in his hypothetical question to the VE. Rollins, 261 F.3d at 857.

1           **A.     Relevant Federal Law**

2           The test for deciding whether to accept a claimant's subjective symptom testimony turns  
3 on whether the claimant produces medical evidence of an impairment that reasonably could be  
4 expected to produce the pain or other symptoms alleged. Bunnell v. Sullivan, 947 F.2d 341,  
5 346 (9th Cir. 1991); see also Reddick, 157 F.3d at 722; Smolen, 80 F.3d at 1281-82 esp. n.2.  
6 The Commissioner may not discredit a claimant's testimony on the severity of symptoms  
7 merely because they are unsupported by objective medical evidence. Reddick, 157 F.3d at  
8 722; Bunnell, 947 F.2d at 343, 345. If the ALJ finds the claimant's pain testimony not credible,  
9 the ALJ "must specifically make findings which support this conclusion." Bunnell, 947 F.2d at  
10 345. The ALJ must set forth "findings sufficiently specific to permit the court to conclude that  
11 the ALJ did not arbitrarily discredit claimant's testimony." Thomas, 278 F.3d at 958; see also  
12 Rollins, 261 F.3d at 857; Bunnell, 947 F.2d at 345-46. Unless there is evidence of malingering,  
13 the ALJ can reject the claimant's testimony about the severity of a claimant's symptoms only by  
14 offering "specific, clear and convincing reasons for doing so." Smolen, 80 F.3d at 1283-84; see  
15 also Reddick, 157 F.3d at 722. The ALJ must identify what testimony is not credible and what  
16 evidence discredits the testimony. Reddick, 157 F.3d at 722; Smolen, 80 F.3d at 1284.

17           **B.     Analysis**

18           In determining Plaintiff's RFC, the ALJ concluded that Plaintiff's medically determinable  
19 impairments reasonably could be expected to cause his alleged symptoms. (AR 24.) The ALJ,  
20 however, also found that Plaintiff's statements regarding the intensity, persistence, and limiting  
21 effects of these symptoms are "not entirely credible." (AR 24.) Because the ALJ did not make  
22 any finding of malingering, he was required to provide clear and convincing reasons supported  
23 by substantial evidence for discounting Plaintiff's credibility. Smolen, 80 F.3d at 1283-84;  
24 Tommasetti v. Astrue, 533 F.3d 1035, 1039-40 (9th Cir. 2008). The ALJ did so.

25           First, the ALJ found that Plaintiff's subjective symptom allegations are inconsistent with  
26 the medical evidence. (AR 24-25.) An ALJ is permitted to consider whether there is a lack of  
27 medical evidence to corroborate a claimant's alleged symptoms so long as it is not the only  
28 reason for discounting a claimant's credibility. Burch v. Barnhart, 400 F.3d 676, 680-81 (9th

1 Cir. 2005). The objective medical evidence (AR 24-25) and opinion of Dr. Ghazi (AR 25)  
2 support the light work RFC with a standing and walking limitation of three hours in an eight hour  
3 workday. With Dr. Ghazi's RFC, there is work in the national economy that Plaintiff can  
4 perform. (AR 26-27.)

5 Second, the ALJ found Plaintiff was able to obtain effective relief with medication.  
6 Warre v. Comm'r of Soc. Sec., 439 F.3d 1001, 1006 (9th Cir. 2006) (impairments that can be  
7 controlled with medication are not disabling). Here, the ALJ found that since May 2013  
8 Claimant's symptoms appeared to mostly be relieved with painkillers and Uloric for his gout.  
9 (AR 24.) His pain management specialists indicated Plaintiff's medications provide moderate  
10 to significant relief, and allow him to remain functional in his daily activities. (AR 24.) His  
11 treating orthopedist advised against surgery unless his symptoms worsen. (AR 24.)

12 Third, the ALJ found that Plaintiff's daily activities were inconsistent with disabling  
13 limitations, which is a legitimate consideration in evaluating credibility. Bunnell, 947 F.2d at  
14 345-46. The ALJ noted that Plaintiff lives with his 70 year old mother and performs light  
15 housework and cleaning. (AR 25.) He also drove a substantial distance in rush hour traffic to  
16 the hearing, which indicates his sitting allegations are not as serious as alleged. (AR 25.)  
17 Plaintiff argues that these activities do not prove he can work but they do suggest that Claimant  
18 has greater functional abilities than alleged. See Valentine v. Commissioner, 574 F.3d 685,  
19 694 (9th Cir. 2009) (daily activities did not suggest Claimant could return to work but did  
20 suggest Claimant's claims about the severity of his limitations were exaggerated).

21 The ALJ also proffers a lack of treatment for almost a year (AR 24), which can be a valid  
22 reason for discounting credibility. Tommasetti, 533 F.3d at 1039. Here, however, records  
23 obtained after the hearing and submitted to the Appeals Council include medical treatment  
24 records for 2015 and 2016. The Court therefore considers the ALJ's lack of treatment finding  
25 unsupported by substantial evidence. The ALJ's error, however, was harmless because there  
26 were other valid reasons for discounting Plaintiff's credibility, as discussed above. The Ninth  
27 Circuit repeatedly has held that an error is harmless where the ALJ provided one or more  
28 invalid reasons for disbelieving a claimant's testimony but also provided valid reasons that were

1 supported by the record. Molina v. Astrue, 674 F.3d 1104, 1115 (9th Cir. 2012); Carmickle v.  
2 Comm'r Soc. Sec. Adm., 533 F.3d 1155, 1162-63 (9th Cir. 2008).

3 Plaintiff disputes the ALJ's adverse credibility determination, but again it is the ALJ's  
4 responsibility to resolve conflicts in the medical evidence and ambiguities in the record.  
5 Andrews, 53 F.3d at 1039. Where, as here, the ALJ's interpretation of the record is  
6 reasonable, it should not be second-guessed. Rollins, 261 F.3d at 857.

7 The ALJ discounted Plaintiff's subjective symptom allegations for clear and convincing  
8 reasons supported by substantial evidence. The ALJ's RFC is supported by substantial  
9 evidence.

10 \* \* \*

11 The ALJ's nondisability determination is supported by substantial evidence and free of  
12 legal error.

13 **ORDER**

14 IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the  
15 Commissioner of Social Security and dismissing this case with prejudice.

16  
17 DATED: September 19, 2018

/s/ John E. McDermott  
JOHN E. MCDERMOTT  
UNITED STATES MAGISTRATE JUDGE